

ALCOHOLIC BEVERAGES DIVISION[185]

Notice of Intended Action

Proposing rule making related to filling and sale of mixed drinks or cocktails in a container other than the original and providing an opportunity for public comment

The Alcoholic Beverages Division hereby proposes to amend Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in 2020 Iowa Acts, House File 2540.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 123.30, 123.43A and 123.49.

Purpose and Summary

This rule making proposes a new rule establishing how a container other than the original container shall be filled with a mixed drink or cocktail, shall be properly sealed so as to not be considered an open container under Iowa Code sections 321.284 and 321.284A, and shall be sold by class “C” and class “C” native distilled spirits liquor control licensees.

The Department of Transportation and the Department of Public Safety were consulted in the writing of this rule. The two departments are responsible for cooperating to ensure the proper and adequate enforcement of Iowa Code chapter 321, “Motor Vehicles and Law of the Road,” which establishes Iowa’s open container laws. The Department of Public Safety is also the primary alcoholic beverage control law enforcement authority in Iowa, pursuant to Iowa Code section 123.14.

The Department of Transportation advised the Division on the types of allowable container-sealing methods that would demonstrate an effort to comply with state and federal open container laws. The Department recommended that the sealing methods be precisely described in the rule because vague or undefined sealing methods could jeopardize millions of dollars of federal highway funds allocated to the State of Iowa. According to a notice issued July 1, 2020, by the U.S. Department of Transportation Federal Highway Administration, over \$541 million was allocated to Iowa in federal FY 2020 under the Fixing America’s Surface Transportation (FAST) Act. Transfer or withholding penalties are applied to states that are found to be in noncompliance with federal open container requirements (23 U.S.C. §154). Iowa was not assessed any penalties for open container requirement noncompliance in federal FY 2020. The Division believes that the rule, as written, should not lead to any future findings of noncompliance.

The Department of Public Safety advised the Division on the types of containers that should not be allowed to be used in the sale of mixed drinks and cocktails to go. The Department recommended that paper, plastic, and Styrofoam cups be prohibited due to the ease of use or access the containers provide and the ability for consumers to conceal consumption while driving, which the Department felt would pose serious dangers to the motoring public and hamper the Department’s enforcement efforts. The rule prohibits all paper and Styrofoam cups from being used, and prohibits plastic cups that are intended for single use only. Plastic cups that are intended to be reused by a consumer are not prohibited.

Additionally, the Division requested from the Iowa Restaurant Association examples of the containers and sealing methods being used by licensees in the marketplace. Two examples were provided by the Association, and those examples were incorporated into the rule making in paragraphs 4.10(3)“b” and 4.10(3)“c.”

Finally, the Iowa Alliance of Coalitions for Change, a group of public health and substance misuse experts from across the state, submitted a letter and proposals to be considered for the rule. Some of the recommendations exceeded what the Division felt to be within its rule-making authority; however, a

recommendation to require labeling on the container clearly marking the contents as containing alcohol was accepted. The Department of Public Safety also supported a labeling requirement, indicating that the requirement would assist in its roadside enforcement efforts. As such, a labeling requirement was included in the rule making in subrule 4.10(4).

The Division crafted this rule based on the recommendations of key state agency partners. Stakeholder feedback was also incorporated into the rule. Overall, the Division feels that this rule is reasonable and balances the legal and social responsibilities of protecting the public with the business needs of licensees.

Fiscal Impact

This rule making has a potential fiscal impact to the State of Iowa. According to the Iowa Department of Transportation, approximately \$12.2 million in federal funds appropriated to Iowa under the FAST Act could be jeopardized if Iowa is found to be noncompliant with the federal open container requirements found in 23 U.S.C. §154. This rule making, as written, precisely describes the sealing methods to be used when mixed drinks and cocktails are sold to go so that the sealed containers are not considered open containers. Vague or undefined sealing methods increase the potential for Iowa to be found noncompliant with 23 U.S.C. §154. The fiscal impact of this rule making to class “C” and class “C” native distilled spirits liquor control licensees is indeterminable.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 185—Chapter 19.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on October 27, 2020. Comments should be directed to:

Tyler Ackerson
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, Iowa 50021
Email: ackerson@iowaabd.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Emergency Rule Making Adopted by Reference

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 5221C**, IAB 10/7/20). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.